Fourth Court of Appeals
San Antonio, Texas

OPINION

No. 04-16-00199-CR

The **STATE** of Texas,
Appellant

v.

Natalie Marie **MEDINA**,
Appellee

From the County Court at Law No. 14, Bexar County, Texas
Trial Court No. 478603
Honorable Raymond Angelini, Judge Presiding

Opinion by: Marialyn Barnard, Justice

Sitting: Sandee Bryan Marion, Chief Justice
Marialyn Barnard, Justice
Patricia O. Alvarez, Justice

Delivered and Filed: August 9, 2017

REVERSED AND RENDERED

After a bench trial, the trial court found appellee Natalie Medina guilty of the offense of selling alcohol to an intoxicated person. However, the trial court subsequently granted Medina's motion for new trial. The State then perfected this appeal, contending the trial court abused its discretion in granting the motion for a new trial because the verdict is not contrary to the law and the evidence. We hold the trial court abused its discretion in granting Medina's motion, reverse the trial court's order, and render judgment reinstating the trial court's original guilty verdict and sentence.

BACKGROUND

The Texas Alcohol and Beverage Commission ("TABC") received a complaint regarding alleged violations of the Texas Alcoholic Beverage Code ("the Code") at a bar called Conroy's. As a result, TABC officers conducted an undercover operation at the bar.

Before entering the bar, the TABC officers saw an intoxicated woman with a group of friends sitting in the bar's patio area. Thereafter, two officers entered the bar in plain clothes to determine if any violations of the Code were being committed. Once inside, one of the undercover officers, Yuri Alvarez, saw the intoxicated woman from the patio approach and speak to Medina, who was a bartender at the bar. According to Officer Alvarez, Medina then mixed four alcoholic drinks and helped the intoxicated woman carry the drinks to the group sitting on the patio. The officer testified that shortly after Medina came back inside, the intoxicated woman returned to the bar and Medina handed her a receipt. The officer saw the intoxicated woman take the receipt, crumple it up, and throw it away. Believing Medina had committed an offense under the Code — selling alcohol to an intoxicated person — Officer Alvarez notified the "identification" members of the team, who then entered the bar to identify the two women and notify them of the alleged violation.

After identifying the women, an officer issued a criminal and administrative notice to Medina, advising her that a warrant would be issued after a charge was filed with the Bexar County District Attorney. Neither Medina nor the intoxicated woman were arrested at that time. The officers released the intoxicated woman to Medina, who took responsibility for taking the intoxicated woman home.

The State subsequently charged Medina with selling alcohol to an intoxicated person, a violation of section 101.63(a) of the Code. *See* TEX. ALCO. BEV. CODE ANN. § 101.63(a) (West 2007). Medina waived a jury trial and the case was tried to the bench. During closing arguments,

the trial court questioned whether the State proved Medina "sold" alcohol. Ultimately, however, the trial court found Medina guilty and sentenced her to one day in jail and assessed a $100.00 fine.

Medina timely filed a motion for new trial in which she asserted the trial court applied an incorrect definition of "sale," and the State failed to produce evidence that a sale occurred under the proper definition. The trial court granted Medina's motion for new trial, and the State appealed.

ANALYSIS

On appeal, the State contends the trial court erred in granting Medina's motion for a new trial, arguing the verdict is not contrary to the law and the evidence, i.e., the evidence is legally sufficient to support the verdict. The dispute centers on whether the State established a "sale" under section 101.63(a) of the Code.

Standard of Review

A trial court has authority to grant a new trial on grounds listed in the Texas Rules of Appellate Procedure, including when the verdict is contrary to the law and the evidence. *See* TEX. R. APP. P. 21.3(h). An allegation that a verdict is against the law and the evidence is a challenge to the sufficiency of the evidence. *State v. Zalman*, 400 S.W.3d 590, 594 (Tex. Crim. App. 2013) (citing *Bogan v. State*, 180 S.W. 247, 248 (Tex. Crim. App. 1915)); *State v. Moreno*, 297 S.W.3d 512, 520 (Tex. App.—Houston [14th Dist.] 2009, pet. ref'd). A trial court's decision to grant a new trial is reviewed for an abuse of discretion. *State v. Arizmendi*, No. PD-0623-16, 2017 WL 2152516, at *4 (Tex. Crim. App. May 17, 2014); *see Kelley v. State*, 429 S.W.3d 865, 876 (Tex. App.—Houston [14th Dist.] 2014 pet. ref'd) (citing *State v. Davenport*, 866 S.W.2d 767, 770 (Tex. App.—San Antonio 1993, no pet.)). A motion for new trial challenging the legal sufficiency of the evidence presents a legal rather than a factual question. *See State v. Fuller*, 480 S.W.3d 812, 819–20 (Tex. App.—Texarkana 2015, pet. ref'd) (quoting *State v. Savage*, 905 S.W.2d 272, 274

(Tex. App.—San Antonio 1995), *aff'd*, 933 S.W.2d 497 (Tex. Crim. App. 1996)); *State v. Daniels*, 761 S.W.2d 42, 45 (Tex. App.—Austin 1988, pet. ref'd). Thus, a trial court must apply the appellate legal sufficiency standard of review. *Fuller*, 480 S.W.3d at 819–20; *Kelley*, 429 S.W.3d at 876; *Moreno*, 297 S.W.3d at 520. Accordingly, when deciding whether to grant a new trial challenging the legal sufficiency of the evidence, the trial court views the evidence in the light most favorable to the verdict and determines whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Fuller*, 480 S.W.3d at 819–20; *Kelley*, 429 S.W.3d at 876; *Moreno*, 297 S.W.3d at 520. If any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt, then the trial court abused its discretion in granting the motion for new trial. *Fuller*, 480 S.W.3d at 819–20; *Kelley*, 429 S.W.3d at 876; *Moreno*, 297 S.W.3d at 520. As this court recognized in *Davenport*, once a defendant is convicted in a bench trial and files a motion for new trial challenging the sufficiency of the evidence, the trial court no longer acts as the trier of fact and is no longer free to weigh the evidence. 866 S.W.3d at 771 (quoting *Daniels*, 761 S.W.2d at 45). Rather, at that point, the trial court is obligated to view the evidence in the light most favorable to its prior guilty verdict. *Id.*

On appeal, "we apply the same standard of review to the trial court's grant of a motion for new trial based on the sufficiency of the evidence as we do to appellate review of challenges to the legal sufficiency of the evidence." *McCall v. State*, 113 S.W.3d 479, 480 (Tex. App.—Houston [1st Dist.] 2003, no pet.); *see Fuller*, 480 S.W.3d at 819–20; *Moreno*, 297 S.W.3d at 520. Thus, we will conduct the same review conducted by the trial court when it made its original determination to grant Medina's new trial. *See Fuller*, 480 S.W.3d at 819–20; *Moreno*, 297 S.W.3d at 520; *McCall*, 113 S.W.3d at 480. In other words, we will review all the evidence in the light most favorable to the guilty verdict to determine whether any rational trier of fact could have found, beyond a reasonable doubt that Medina committed the offense. *See Brooks v. State*, 323

S.W.3d 893, 912 (Tex. Crim. App. 2010) (citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)); *Hartsfield v. State*, 305 S.W.3d 859, 863 (Tex. App.—Texarkana 2010, pet. ref'd) (citing *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007)). We remain mindful that we give deference to the responsibility of the fact finder "to fairly resolve conflicts in testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007) (citing *Jackson*, 443 U.S. at 318–19); *see Rabb v. State*, 434 S.W.3d 613, 617 (Tex. Crim. App. 2014) (holding fact finders are permitted to draw reasonable inferences if supported by evidence).

Application

1. *What is a "sale" under Section 101.63(a)?*

Before we can determine whether the trial court erred in granting Medina's motion, i.e., whether the evidence is legally insufficient to establish a sale, we must first ascertain what constitutes a "sale" within the context of section 101.63(a). *See* TEX. ALCO. BEV. CODE ANN. § 101.63(a).

Under the Code, a person commits an offense if the person (1) with criminal negligence, (2) *sells* an alcoholic beverage, (3) to an intoxicated person. *Id.* (emphasis added). When interpreting statutory language, courts focus on the intent of the legislature. *Clinton v. State*, 354 S.W.3d 795, 800 (Tex. Crim. App. 2011). To determine legislative intent, we first look to the "literal text" because it provides "the best means to determine 'the fair objective meaning of that text at the time of its enactment.'" *Id.* (quoting *Boykin v. State*, 818 S.W.2d 782, 785 (Tex. Crim. App. 1991)). We begin by attempting to interpret the statute based on the plain meaning of the words used. *Olivas v. State*, 203 S.W.3d 341, 345 (Tex. Crim. App. 2006). The term "sale" or "sells" is not defined in the Code, so we turn to "the common, ordinary meaning of the word." *Id.*;

see Clinton, 354 S.W.3d at 800. Courts may consult standard dictionaries in determining the fair, objective meaning of undefined statutory terms. *Clinton*, 354 S.W.3d at 800.

The ordinary meaning of the term "sale" or "sells" is to give or agree to give something to someone in exchange for money, i.e., transferring property from one person to another for a price. *Sale*, MERRIAM-WEBSTER DICTIONARY (11th ed. 2014); *Sale*, SHORTER OXFORD ENGLISH DICTIONARY (6th ed. 2007). Black's Law Dictionary defines "sale" as "the transfer of property or title for a price." *Sale*, BLACK'S LAW DICTIONARY (10th ed. 2014). Moreover, although the Code does not define "sale" or "sells," the Texas Court of Criminal Appeals has defined "sale" or accepted definitions of the term "sale" in numerous cases, and in those cases "sale" has been defined as the transfer of property from one person to another in exchange for money or other consideration. *See, e.g., Ballew v. State*, 121 S.W.2d 346, 346–47 (Tex. Crim. App. 1938) (holding trial court's charge defining the term "sale" appropriate); *Tombeaugh v. State*, 98 S.W. 1054 (Tex. Crim. App. 1906) (holding that loan of whiskey in exchange for same amount to be returned or paid for at later time constituted sale); *Krnavek v. State*, 41 S.W. 612 (Tex. Crim. App. 1897) (holding jury instruction providing that "sale" is "the passing of title and possession of any property for money, which the buyer pays or promises to pay" was sufficient); *Keaton v. State*, 38 S.W. 522, 523 (Tex. Crim. App. 1896) (holding delivery of whiskey by defendant to another person to be paid for in other whiskey constituted sale); *State v. Harris*, 342 S.W.2d 177 (Tex. App.—Dallas 1960, no writ) (holding that "[a] sale may be defined as a transfer of personal property from one person to another person for a price in money or for property of an agreed money value."). Additionally, the Texas Penal Code has defined "sale" and "sell" to include any disposition for value. TEX. PENAL CODE ANN. § 32.42(a)(9) (West 2016) (defining "sale" or "sell" for purposes of deceptive business practice as offer for sale, advertise for sale, expose for sale,

keep for purpose of sale, deliver or after sale, solicit and offer to buy, and every disposition for value).

Additionally, our review of other provisions within the Code establishes the legislature has used terms other than "sale" or "sells" to describe the provision of alcohol when alcohol is provided without an exchange or money or other consideration. *See* TEX. ALCO. BEV. CODE ANN. § 2.01 (defining "provision" to include service of alcoholic beverage for purposes of civil liability); *id.* § 2.02(b) (stating that "providing, selling, or serving" alcoholic beverage to 'obviously' intoxicated individual may be basis of statutory cause of action or license revocation); *id.* §§ 105.04-.051 (setting out hours during which person may sell, offer for sale, or deliver beer and wine); *id.* § 106.06 (stating that person commits offense if he purchases alcoholic beverage for or gives or with criminal negligence makes available such beverage to minor). Thus, the legislature has made distinctions in the Code between selling, offering to sell, serving, delivering, and furnishing alcoholic beverages.

Based on the foregoing, we hold that under section 101.63(a), and in the context of this case, a person sells an alcoholic beverage, when a person provides another person with an alcoholic beverage in exchange for consideration. Thus, the defendant must do more than deliver, serve, or furnish the alcohol. The provision of alcohol must be in exchange for consideration to constitute a "sale" under section 101.63(a).

In this case, the evidence shows Medina gave the intoxicated woman a receipt. Thus, the definition of a "receipt" is also relevant in this case. A "receipt" is a writing acknowledging the receiving of goods or money. *Receipt*, MERRIAM-WEBSTER DICTIONARY. More specifically, a receipt is a writing marking a bill as paid. *Receipt*, SHORTER OXFORD ENGLISH DICTIONARY. With the definitions of "sale" and "receipt" in mind, we turn to the evidence.

2. The Evidence

The parties agree the evidence established all the elements of the offense except for a "sale." Medina argues the evidence is insufficient to establish a sale. Rather, according to Medina, the evidence merely shows delivery or provision of alcoholic beverages — there is no evidence of an exchange of alcohol for consideration. We disagree.

Although none of the TABC officers witnessed an actual exchange of consideration — whether by cash, credit or debit card, etc., Officer Alvarez testified she heard the intoxicated woman order mixed drinks from Medina. Officer Alvarez testified she saw Medina mix four alcoholic drinks, hand three of them to the intoxicated woman, and help the intoxicated woman carry the remaining drink to the group sitting on the patio. Officer Alvarez further testified that shortly after Medina came back into the bar, the intoxicated woman also came inside and Medina handed her a receipt. Officer Alvarez testified she saw the intoxicated woman take the receipt and dispose of it. Thus, there was evidence that in exchange for the mixed drinks, Medina provided the intoxicated woman with a receipt, which is an acknowledgement of payment received. *See Receipt*, MERRIAM-WEBSTER DICTIONARY.

As noted above, a trier of fact may draw reasonable inferences from the evidence. *Rabb*, 434 S.W.3d at 617. Thus, if a trier of fact could reasonably infer from the evidence set out above that Medina sold alcoholic beverages to an intoxicated person, then the evidence is sufficient to support her conviction, and the trial court abused its discretion in granting the motion for new trial. Viewing the undisputed facts in the light most favorable to the verdict — service of alcoholic beverages to an intoxicated person followed closely by the provision of a receipt — we hold a rational trier of fact could have reasonably inferred the receipt was for the drinks Medina delivered to the intoxicated woman. In sum, considering the definitions of "sale" and "receipt" and viewing the evidence in the light most favorable to the trial court's original verdict of guilt, we hold a

rational trier of fact could have reasonably found or inferred: (1) the intoxicated woman ordered four alcoholic beverages; (2) Medina delivered the alcoholic beverages to the intoxicated woman; and (3) the receipt Medina provided in return was an acknowledgement that payment for the alcoholic beverages had been received from the intoxicated woman. Given the evidence supports the rational inference of a sale, the trial court was required to defer to its original resolution and disregard other possible inferences, just as we are on appeal. *See Fuller*, 480 S.W.3d at 819–20; *Kelley*, 429 S.W.3d at 876; *Moreno*, 297 S.W.3d at 520. However, the trial court did not act with the required deference. Accordingly, we hold the trial court abused its discretion in granting Medina's motion for new trial. *See Fuller*, 480 S.W.3d at 819–20; *Kelley*, 429 S.W.3d at 876; *Moreno*, 297 S.W.3d at 520.

CONCLUSION

Viewing the evidence in a light most favorable to the verdict, we conclude the evidence was sufficient for a trier of fact to conclude Medina provided drinks to an intoxicated person in exchange for consideration. Thus, we hold the evidence was sufficient to establish Medina sold alcohol to an intoxicated person in violation of section 101.63(a) of the Code. We hold the trial court abused its discretion in granting Medina's motion for new trial and sustain the State's appellate issue. We reverse the trial court's order and render judgment reinstating the trial court's original guilty verdict and sentence. *See* TEX. R. APP. P. 43.3 (stating that when appellate court reverses trial court's judgment, appellate court must render judgment trial court should have rendered unless remand is necessary).

Marialyn Barnard, Justice

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